

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

TAMIA BANKS, et al., )  
Plaintiffs, )  
vs. )  
COTTER CORPORATION, (N.S.L.), et al., )  
Defendants. )  
-----)  
COTTER CORPORATION, (N.S.L.), )  
Third-Party Plaintiff, )  
vs. )  
MALLINCKRODT LLC, et al. )  
Third-Party Defendants. )  
-----)  
Case No. 4:20-cv-01227

**MOTION FOR LEAVE TO FILE  
THIRD AMENDED AND SUPPLEMENTAL CLASS ACTION COMPLAINT**

COME NOW Plaintiffs, on behalf of themselves and all others similarly situated, by and through counsel, and Pursuant to Federal Rule of Civil Procedure 15(a)(2), hereby move this Court for leave to file their Third Amended and Supplemental Class Action Complaint. In support of said Motion, Plaintiffs state the following:

1. It is not an exaggeration to summarize the last five years of this litigation as a fight on *where* to fight, which is finally resolved.
2. Plaintiffs filed this class action on February 18, 2018, in St. Louis County, Missouri. Since the time of initial filing, this class action has been removed in April of 2018,

remanded in March of 2019, removed once more in September of 2020, and remanded again in December of 2020. Defendant Cotter appealed the December 2020 remand, and the Eighth Circuit Court of Appeals, finding federal question jurisdiction under the Price Anderson Act (“PAA”), reversed the District Court’s remand order in January of 2022. After denial of the resulting Petition for Writ of Certiorari filed with the U.S. Supreme Court, Response, and subsequent Reply, this matter now sits squarely in the U.S. District Court for the Eastern District of Missouri.

3. Plaintiffs therefore seek to file their proposed Third Amended and Supplemental Class Action Complaint, which would amend, *inter alia*, Plaintiff’s allegations to comply with federal pleading standards and requirements and address the jurisdictional and other substantive issues encountered since the time of last amendment back in October of 2019. A redacted copy<sup>1</sup> of the proposed Third Amended and Supplemental Class Action Complaint is attached hereto as Exhibit 1.

4. A party may amend its pleading with an opposing party’s consent or by leave of the Court. “The court should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2).

5. Under the very liberal Rule 15 standard, granting Plaintiffs leave to amend their Complaint will not cause undue delay, nor any prejudice to Defendants. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (denial of leave to amend pleadings is appropriate *only* if there are compelling reasons including “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment.”); *see also Becker v. Univ. of Nebraska*, 191 F.3d 904, 908 (8th Cir. 1999) (“[A] motion to amend should be denied on the

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<sup>1</sup> As the proposed Third Amended and Supplemental Class Action Complaint contains privileged and/or confidential information, an unredacted copy will be filed under seal once appropriate.

merits only if it asserts clearly frivolous claims or defenses.”) (internal citations omitted).

6. Permitting Plaintiffs to file their Third Amended and Supplemental Class Action Complaint will not prejudice Defendants, nor are the amendments futile or frivolous. Further, the amendments contained in Plaintiffs’ proposed Third Amended and Supplemental Class Action Complaint arise from the conduct and the occurrence set forth in Plaintiffs’ original Class Action Complaint and therefore relate back to the date of the original pleading.

WHEREFORE Plaintiffs respectfully request this Court grant their Motion for Leave to File Plaintiffs’ Third Amended and Supplemental Class Action Complaint and for such further relief as the Court deems just and necessary under the circumstances.

Dated: January 9, 2023

Respectfully submitted,

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/s/ Ryan A. Keane

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served on all counsel of record via this court's ECF/PACER electronic filing notification system on January 9, 2023.

*/s/ Ryan A. Keane* \_\_\_\_\_